

1 JAMES R. HOMOLA #60244
Attorney at Law
2 2950 Mariposa Street, Ste. 250
Fresno, California 93721
3 Telephone: (559) 441-7111

4 Attorney for Defendant
JOSHUA LEONARD
5

6 IN THE UNITED STATES DISTRICT COURT FOR THE
7 EASTERN DISTRICT OF CALIFORNIA

8 * * * * *

9 UNITED STATES OF AMERICA,

CASE NO. CR-20-26 NONE-SKO

10 Plaintiff,

REPLY TO GOVERNMENT'S
SENTENCING MEMORANDUM

11 vs.

12 JOSHUA LEONARD,

Date: October 9, 2020
Time: 10:00 am

13 Defendant.
14 _____/

15 Defendant JOSHUA LEONARD, by and through his attorney of
16 record, James R. Homola, submits the following discussion in
17 support of his contention that a custodial sentence of 10 months,
18 followed by a year of supervised release, as described in the
19 plea agreement, recommended by the Probation Officer, and
20 prescribed by straightforward application of the US Sentencing
21 Guidelines, is the appropriate sentence in this case,
22 notwithstanding the government's request, instead, for a sentence
23 of four years probation.

I SENTENCE

Mr. LEONARD has been in custody since his arrest, in Texas, in January of this year. Bail was denied, then and subsequently, after repeated requests, and over repeated invocations of the Speedy Trial Act, each time opposed by the government.

In consequence, as of the date of sentencing, Mr. LEONARD will already have served all, or nearly all, of the custodial sentence recommended by the Probation Officer, and will be liable for any custodial time yet unserved, and for a period of supervised release of not more than one year, pursuant to the express terms of 18 USC §3583(b)(3).

The government, by this request, seeks to have its cake, and eat it, too. The government seeks, effectively imposition of the full term of custody called for by the recommendation of the Probation Officer, pursuant to the US Sentencing Guidelines, and contemplated by the plea agreement [Document #35], and, **after** that custodial term has been served, nearly to completion, under the especially fraught conditions of an ongoing Covid19 pandemic, adding an extended term of supervision that is not authorized by the Guidelines, and is expressly excluded by the relevant statute, 18 USC §3583(b)(3).

The request of the government also contravenes the terms of the plea agreement, which expressly states that the maximum sentence Mr. LEONARD could receive (excluding fines and

1 assessments) would be one year in custody, and one year of
2 supervised release. The plea agreement makes no mention of any
3 alternative, years-longer sentence of probation, as if Mr.
4 LEONARD had not already served these many months in custody.
5 [Plea Agreement, §V, ¶5, under the heading "Maximum Sentence"].
6 Mr. LEONARD could not but regard this as a "bait and switch"
7 artifice; it will not promote respect for the law.

8 II FURTHER HEARING RE RESTITUTION

9 While restitution is already addressed in the Presentence
10 Report, the government also requests another hearing, within 90
11 days, to allow further efforts to contact the complaining
12 witness, to "clarify the amounts of restitution she previously
13 requested." The government has already interviewed this witness,
14 over a period of days, and has subsequently had nearly a year to
15 gather any such further information from her as might be needed.

16 The government cites §3664(d)(5) in support of this request,
17 but has offered no other reason than that the government has been
18 unable to reach the complaining witness. However, the statute
19 states that "Such order may be granted only upon a showing of
20 good cause for the failure to include such losses in the initial
21 claim for restitutionary relief." [18 USC §3664(d)(5)]

22 In this case, this is a witness the government already had
23 substantial time to interview, over a period of days, and did so
interview, including as to the matter at issue.

1 Mr. LEONARD contends that the bare failure to contact this
2 witness, again, over the ensuing nine or ten months, does not
3 establish good cause for failure to include any conjectured
4 additional losses. Nor is there any reason to expect that the
5 government, after being apparently unable to contact this witness
6 over the course of this last year, will now likely be able to do
7 so within the next 90 days.

8 III CONCLUSION

9 For all the foregoing reasons, it is respectfully requested
10 that the Court impose the sentence, ten months in custody, and
11 one year of supervised release, contemplated by the plea
12 agreement, prescribed by the US Sentencing Guidelines, and
13 recommended by the Probation Officer.

14 DATED: October 6, 2018

Respectfully submitted,

15 /s/ James R. Homola

JAMES R. HOMOLA

Attorney for Defendant

JOSHUA LEONARD